

*Orders file*



Before The  
State Of Wisconsin  
**DIVISION OF HEARINGS AND APPEALS**

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IN THE MATTER OF CLAIMS AGAINST THE  
DEALER BOND OF CHAMPION MOTORS

Case No. DOT-98-353

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FINAL DECISION

On October 26, 1998, Lea Rae Bengel filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Champion Motors. The claim along with the documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing

An informal telephone hearing was conducted on April 5, 1999, Mark J. Kaiser, Administrative Law Judge, presiding. Participating in the telephone hearing were the claimant, Lea Rae Bengel and Steven Reid, Senior Investigator, Dealer Section, Wisconsin Department of Transportation. Donald Lavrenz, proprietor of Champion Motors, did not participate in the telephone hearing but did file a written statement on March 31, 1999. The Administrative Law Judge issued a Preliminary Determination on April 28, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. Donald Lavrenz, d/b/a Champion Motors (dealer), is a used motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The dealer's facilities are located at 558 South Military Road, Fond du Lac, Wisconsin.

2. The dealer has had a surety bond in place from January 1, 1995 to the present date. (Bond #LP588188 from Capitol Indemnity Corporation, Madison, WI.).

3. On June 3, 1998, Lea Rae Bengel purchased a 1991 Ford Thunderbird, Vehicle Identification Number 1FAPP6044MH166583, from Champion Motors. The vehicle was sold "As-Is" with no warranty

4. On the Wisconsin Buyer Guide the dealer disclosed the vehicle as having front wheel drive (Exh. Z11). The vehicle actually has rear wheel drive. The Wisconsin Buyer Guide disclosed no problems or defects for the vehicle.

5 Within a week of purchasing the vehicle Ms. Bengel discovered the water pump leaked, the brakes were bad, the front end needed aligning, and one of the windshield wipers fell off. On June 4, 1998, Ms. Bengel paid \$17.83 for a new wiper blade and \$38.16 for a water pump; on June 8, 1998, she paid \$43.58 to have the front end of the vehicle aligned, and, on June 10, 1998, she paid the dealer \$105.75 to install the water pump and to "cut" the front and rear brake rotors. These repairs total \$205.32.

6 Ms. Bengel filed a complaint with the Department of Transportation Dealer Section (Dealer Section) seeking \$500 reimbursement for the cost of the repairs and because the vehicle was not front wheel drive as disclosed (Exh. Z18). The Dealer Section investigated the complaint. In response to the complaint, the dealer offered Ms. Bengel \$100 to settle the case or, alternatively, offered to repurchase the vehicle at the purchase price less 25 cents per mile for the miles Ms. Bengel put on the vehicle.

7 Ms. Bengel did not want to sell the vehicle back to the dealer and would not accept \$100 to settle the claim. On October 26, 1998, Ms. Bengel filed a claim against the surety bond of Champion Motors. The amount of the claim is \$500.00. It is itemized as \$205.32 for the repair described above and \$300.00 for inconvenience.

8 The bond claim was filed within three years of the ending date of the period the Capitol Indemnity bond was in effect and is, therefore, a timely claim.

9 \$205.32 of the loss sustained by Ms. Bengel was caused by an act of the dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, this amount of the claim is allowable.

#### DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec. Trans 140.21(1), Wis. Adm. Code provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1 A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s 218.01(3)(a)1. To 14., 18 To 21., 25. or 27. To 31 , Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Ms. Bengel's claim, a finding must be made that Champion Motors violated one of the sections of sec. 218.01(3)(c), Stats , listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by Ms. Bengel.

In this case, the dealer committed two disclosure violations on the Wisconsin Buyer's Guide. The first violation is that the dealer disclosed the vehicle as having front wheel drive when in fact it had rear wheel drive. Ms. Bengel did not put a dollar figure on her claim for any loss resulting from the vehicle having rear wheel drive, rather than front wheel drive. The Dealer Section was also unable to find a figure for the difference in value of a vehicle with rear wheel drive, as opposed to front wheel drive. Additionally, the dealer did offer to repurchase the vehicle from Ms. Bengel if she was dissatisfied. Ms. Bengel declined this offer. If it had been important to Ms. Bengel to have a vehicle with front wheel drive, she could have accepted the dealer's offer.

The second disclosure violation is the dealer disclosed the condition of the brakes, water pump, front end alignment, and wiper blades as being "okay." All these components were in fact defective and needed to be repaired within one week of Ms. Bengel's purchase of the vehicle. It is likely that if Ms. Bengel had been aware of these defects, she would not have purchased the vehicle or would have negotiated a lower purchase price for the vehicle taking into account the cost of making these repairs. Accordingly, \$205.32 of Ms. Bengel's loss was the result of this disclosure violation.

On the bond claim, Ms. Bengel claimed \$300.00 for inconvenience. This portion of the claim is not allowable according to sec. Trans 140.21(2)(e), Wis Adm. Code, and will not be allowed.

### CONCLUSIONS OF LAW

1. Lea Rae Bengel's claim arose on June 3, 1998, the date she purchased the subject vehicle from Champion Motors. The surety bond issued to Champion Motors, by Capitol Indemnity Corporation covers a one-year period commencing on January 1, 1998. The claim arose during the period covered by the surety bond.

2 Ms. Bengel filed a claim against the motor vehicle dealer bond of Champion Motors. On October 26, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond; therefore, pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, accordingly, the claim is timely.

3. Ms. Bengel's loss was caused by an act of Champion Motors, which would be grounds for suspension or revocation of its motor vehicle dealer license. Ms. Bengel has submitted documentation to support a claim in the amount of \$205.32. Pursuant to sec Trans 140.21(1)(c), Wis Adm Code, this portion of the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Lea Rae Bengel against the motor vehicle dealer bond of Champion Motors, is APPROVED in the amount of \$205.32. Capitol Indemnity Corporation shall pay Ms. Bengel this amount for her loss attributable to the actions of Champion Motors.

Dated at Madison, Wisconsin on June 3, 1999

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone. (608) 266-7709  
FAX: (608) 264-9885

By. Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE